



*Southern Association of Colleges and Schools  
Commission on Colleges  
1866 Southern Lane  
Decatur, Georgia 30033-4097*

## **ARBITRATION OF ADVERSE ACTIONS**

### **Policy Statement**

This Arbitration Policy of the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) shall apply only to actions of SACSCOC that have been fully and finally determined by a written decision of the Appeals Committee of the College Delegate Assembly pursuant to the SACSCOC policy [Appeals Procedures of the College Delegate Assembly](#).

As a condition of applying for Initial Accreditation, or for continued Membership with SACSCOC, each Candidate for Initial Accreditation and each Member of SACSCOC consents to resolving disputes in accordance with the binding arbitration procedures set forth in this Policy as required by 20 U.S.C. §1099b(e) and 34 C.F.R. §602.20(e). SACSCOC shall inform all institutions subject to this Policy of its requirements and their consent thereto as a condition of application and accreditation.

### **Binding Arbitration**

#### Governing Law

The arbitration process in this Policy shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16 (Act), which shall be deemed to preempt any State arbitration provisions that may otherwise be applicable.

#### Binding Award

The award of the arbitrators rendered pursuant to this Policy shall be final and binding on all of the parties. A judgment may be entered upon the award by the application of either party to the Atlanta Division of the United States District Court for the Northern District of Georgia in accordance with the Act.

#### Jurisdiction of the Arbitrators

The arbitrators shall have jurisdiction to determine whether the decision of the Appeals Committee was rightly decided and to make all rulings necessary and incidental thereto. The arbitrators shall have no jurisdiction or authority to enter an award for monetary damages. The award of the arbitrators shall be limited to affirmance or reversal of the decision of the Appeals Committee and the reasons therefor and in accordance with the SACSCOC policy on [Appeals Procedures of the College Delegate Assembly](#).

#### Decisions by the Arbitrators

All decisions by the arbitrators shall be by majority vote.

## **Arbitrators**

### Roster of Arbitrators

SACSCOC shall maintain a roster of arbitrators. An arbitrator may be nominated by any SACSCOC Board member, by the Chief Executive Officer of a member institution, by the proposed arbitrator, or by the Chief of Staff of SACSCOC. To begin, twelve (12) arbitrators will be elected by the SACSCOC Nominating Committee, in staggered terms ending in 2023, 2026 and 2029. Thereafter, arbitrators shall be elected to a three-year term, unless they resign or are removed. Arbitrators may serve a maximum of three (3) successive terms or nine (9) years. At the conclusion of successive terms, the arbitrator must remain off the list for one (1) year before being eligible for re-election as an arbitrator. SACSCOC will endeavor to assure that the roster of arbitrators is representative of the diversity of member institutions.

### Qualifications of Arbitrators

To be considered for the roster of arbitrators, a person must have significant experience in higher education and in the accreditation of institutions of higher education. An arbitrator must be an educator of at least ten (10) years of experience in a senior level position in higher education and at least ten years of experience in accreditation matters. An arbitrator may have experience from or reside outside the region traditionally served by SACSCOC. An arbitrator need not be currently affiliated with any institution of higher education or with any accredited institution. An arbitrator need not be a lawyer or have legal training, though both are considered desired qualifications. An arbitrator need not have formal training in arbitration, though such training is considered a desired qualification. No person who has previously been employed by SACSCOC may serve as an arbitrator.

### Removal of Arbitrators

The Chair of the SACSCOC Board of Trustees may remove from the roster any arbitrator for Good Cause in the sole judgment of the Chair as stated in writing. The Chair's decision is final and not reviewable.

## **Commencement of an Arbitration Proceeding**

### Notice of Arbitration, Deposit, and Payment of Expenses

An institution may submit a notice of arbitration in writing by its Chief Executive Officer to the President of SACSCOC by email or facsimile transmission within ten (10) calendar days of the institution's receipt of the final written decision of the Appeals Committee. The original notice of arbitration shall be sent by overnight delivery to the President of SACSCOC at the same time if it is sent by email or facsimile transmission. The original notice of arbitration shall be accompanied by a check in the amount of \$15,000.00 as a deposit payable to SACSCOC for travel, lodging, meals, and venue charges incurred by the arbitrators and SACSCOC in convening and pursuing the arbitration. The institution submitting the matter to arbitration is responsible for all expenses of the arbitration. If the expenses actually incurred exceed the deposit, the institution will be assessed the additional amount. If the expenses are less, then the difference will be refunded to the institution. The arbitrators shall submit expense vouchers to SACSCOC in accordance with SACSCOC policy [Reimbursement for Expenses](#).

### Contents of the Notice

The notice of arbitration need not be in any particular form but must clearly identify the decision of the Appeals Committee and state that the institution submits the decision of the Appeals Committee to binding arbitration in accordance with this Policy. The notice need not specify the basis for the arbitration. The notice of arbitration is sufficient to challenge the decision of the Appeals Committee on all legal grounds.

### Effect of the Notice

A timely notice of arbitration in accordance with this Policy shall have the immediate effect of continuing the institution in accreditation with SACSCOC in the same status as it was prior to the adverse decision until the arbitration award is rendered. SACSCOC shall provide notice to any constituencies previously noticed of the result of the appeal that a timely notice of arbitration has been filed and the effect thereof.

## **Arbitration Proceedings**

### Number and Method of Appointing Arbitrators

An arbitration proceeding under this Policy shall require three (3) arbitrators. No arbitrator who resides in the same state as the main campus of the institution nor who has previously been employed by or served as a consultant for the institution may be eligible for selection as an arbitrator in any proceeding concerning that institution. Upon receipt of the Notice of Arbitration, the President of SACSCOC shall provide to the Chief Executive Officer of the institution the names of eligible arbitrators from the current Roster of Arbitrators. The Chief Executive Officer of the institution shall select one arbitrator from the Roster of Arbitrators within five (5) business days and shall notify the President of SACSCOC. The President of SACSCOC shall select one arbitrator from the Roster of Arbitrators and shall so notify the Chief Executive Officer of the institution within five (5) business days of the institution's selection. The President of SACSCOC shall so notify the selected arbitrators in writing with a copy of the selection letter to the Chief Executive Officer of the institution. These two (2) arbitrators shall confer and select one (1) additional arbitrator from the names of eligible arbitrators on the current Roster of Arbitrators, and the President of SACSCOC shall so notify the selected arbitrator in writing with a copy of the selection letter to the Chief Executive Officer of the institution. Upon their appointment, the SACSCOC President shall provide each arbitrator with a copy of this policy.

### Conflict of Interest and Recusal

The selected arbitrators shall be governed by the Conflict of Interest provisions of the [Appeals Procedures of the College Delegate Assembly](#). Selected arbitrators shall receive a copy of the [Appeals Procedures of the College Delegate Assembly](#) policy and requisite information to declare in writing whether a conflict of interest requires recusal. In the event that a selected arbitrator discovers a conflict after the convening of the arbitration, such an arbitrator shall recuse themselves from further proceedings. In the instance of a selected arbitrator being unable to serve or continue serving for any reason, the entity originally selecting such arbitrator shall select a replacement in accordance with this policy.

### Convening the Arbitration and Administrative Conference

Once three arbitrators have been selected, it is the responsibility of the arbitrators within ten (10) calendar days to convene by conference call, video conference, or in person; to select a chair, who shall preside at all further proceedings and shall assure that all policies are complied with; and to establish the time and manner of the arbitration proceedings within the procedures set forth in this policy. All dates for the taking of actions under this policy thereafter will be calculated from that date. At the request of any party or upon the arbitrators' own initiative, the arbitrators may conduct an administrative conference with the parties to address timing and any other administrative matters which may coincide with the convening of the arbitration.

### Communications with Arbitrators

No party and no one acting on behalf of any party shall communicate *ex parte* with any arbitrator. All communications with the arbitrators shall be with all three and shall simultaneously be provided to the other party. It shall not be deemed an *ex parte* communication forbidden by this Policy for staff of SACSCOC to discuss logistical and procedural matters with arbitrators, including but not limited to such things as the venue of proceedings, travel, lodging, meals, and expense reimbursement.

### Confidentiality

All information provided to the arbitrators by either party is confidential. After the conclusion of the arbitration, the arbitrators shall destroy and not retain any documents, in whatever form, provided to them during the course of the arbitration.

## **Arbitration Procedures**

### Time for Completion of the Arbitration

The arbitration proceedings shall be completed within 90 calendar days of the date of the convening of the arbitration. The completion of the proceedings shall be evidenced by the written award of the arbitrators.

### Record on Review

The review of the decision of the Appeals Committee by the arbitrators shall be based upon the record presented to the Appeals Committee, including the Administrative Record, the Briefs of the Parties, the Transcripts of the Appeals Hearing and any pre-hearing proceedings, any additional evidence submitted to the Appeals Committee, any rulings thereon by the Hearing Officer, and the decision of the Appeals Committee. It shall be the duty of the President of SACSCOC, assisted by the Hearing Officer of the Appeals Committee, to assemble the Record on Review and submit it to the arbitrators and to the representatives of the parties within 30 calendar days of the convening of the arbitration. The Record on Review shall be submitted electronically.

### Discovery and Submission of Additional Evidence

There shall be no discovery in the arbitration proceeding. There shall not be any additional evidence submitted to the arbitrators beyond the Record on Review.

### Standard of Review

The institution shall bear the burden of persuading the arbitrators that the decision of the Appeals Committee is clearly erroneous in accordance with the standards of the [Appeals Procedures of the College Delegate Assembly](#) and in accordance with applicable law.

### Location and Manner of the Proceedings

The arbitration proceedings shall take place in the Atlanta Metropolitan Area at a venue arranged for by SACSCOC in consultation with the arbitrators and the parties. With the unanimous consent of the parties and the arbitrators, the proceedings may take place at another venue within or without the Atlanta Metropolitan Area; however, financial arrangements thereof must be made and agreed to in advance. With the unanimous consent of the parties and the arbitrators, some or all of the proceedings may take place remotely, by telephonic or other electronic means, so long as all parties and all arbitrators can participate equally.

### Representation

Any party may participate *pro se* without representation or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the arbitrators of the name, telephone number, physical address, and email address of the representative at least seven (7) calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative responds for a party, notice is deemed to have been given.

### Preliminary Hearing

At the discretion of the arbitrators a preliminary hearing may be scheduled, and if deemed necessary, it should be scheduled as soon as practicable. The parties should be invited to attend along with their

representatives. The parties and the arbitrators should be prepared to discuss and establish a procedure for conducting the arbitration proceedings within the procedures set forth in this Policy.

#### Briefs

The institution initiating the arbitration shall submit its principal brief within 14 days of receipt of the Record on Review. SACSCOC shall submit its response brief within 14 days of receipt of the brief of the institution. The arbitrators may request briefs of the parties on such other matters and at such times as they may determine. All briefs shall be submitted electronically.

#### Hearing

The hearing on the issue(s) raised by the parties to the arbitration shall be heard by the arbitrators at a date scheduled by the arbitrators. The arbitrators may request argument of the parties on such other matters and at such times as they may determine. The hearing shall take place in the Atlanta Metropolitan Area at a venue arranged for by SACSCOC in consultation with the arbitrators and the parties. When deemed appropriate, the arbitrators may allow the arguments to be presented electronically, by video conferencing, internet communication, telephonic conferences and means other than an in-person presentation.

#### Attendance at the Proceedings

All arbitration proceedings are private and are not open to the public. Any person having a direct interest in the arbitration is entitled to attend the hearings. The arbitrators shall have the discretion to determine the propriety of the attendance of any person other than the parties and their representatives.

#### Stenographic and Other Recordings

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three (3) calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record. No other method of recording the proceedings is permitted absent the agreement of the parties or the direction of the arbitrators.

#### Waiver

Any party who proceeds with the arbitration after knowledge that any provision or requirement of this policy has not been complied with and fails to object in writing shall be deemed to have waived the objection.

#### Time, Form, and Delivery of the Award

The award shall be made by the arbitrators in writing no later than 90 calendar days from the initial convening of the arbitration. The award shall be signed by a majority of the arbitrators and shall be executed in the form and manner required by the Act and this Policy. The award shall state the reasons for the award and shall rule on the substantial claims of the parties. The award shall either affirm the decision of the Appeals Committee or reverse it, stating the reasons therefor. The award shall be delivered electronically to the email addresses of the parties and to their representatives. The award shall take effect immediately, and upon the rendering of the award, the status of the institution shall be consistent with the award as determined by the arbitrators. Receipt of the award constitutes acceptance of the award and the award is binding on all parties.

#### *Document History*

*Approved, SACSCOC Board of Trustees; September 2020*